

**Arizona Association of Community Managers
2019 Final Legislative Session Report**



**Prepared by Veridus LLC
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General Session Overview

Lawmakers formally adjourned sine die at 12:58 AM on Tuesday, May 28, 2019. At 135 days, the 2019 regular session marks the longest of Gov. Doug Ducey's tenure. In total, 1,318 bills and 100 memorials and resolutions were introduced by legislators this session. 331 bills received final passage. The governor signed 320 bills into law and vetoed 11. The general effective date for all non-emergency measures is Aug. 27, 2019; bills containing an emergency clause take effect immediately upon signature.

A Watershed Session

Water – there's nothing more critical to Arizona's future. So, perhaps it's appropriate the first major action taken by lawmakers and Governor Ducey this year was their bipartisan approval of the [Drought Contingency Plan](#). Policymakers and water managers hope the plan will help stave off more severe future water shortages within the Colorado River Basin.

Following approval of the DCP, not much else went quite as smoothly at the State Capitol. No surprise there. Following the 2018 election, the GOP clung to control of the House (31R-29D) and Senate (17R-13D) by the narrowest of margins. The result had Democrats feeling empowered and GOP legislative leaders struggling to navigate a new, more challenging political environment.

Conformity Calamity

The post-DCP harmony didn't last long, as the Governor bucked his party with his [veto of a GOP-backed tax conformity bill](#). Legislative Republicans unanimously favored the legislation, which would have conformed Arizona's income tax code to federal law while cutting rates to offset the loss of deductions resulting from President Trump's tax plan. Gov. Ducey preferred that any extra revenue be used to bolster Arizona's Rainy Day Fund – a backstop reserve in case of future economic downturns.

Ultimately, the fight over conformity was resolved via the budget. So was the *Wayfair* dispute, which refers to the 2018 U.S. Supreme Court decision authorizing the collection of sales tax on retail purchases made via out-of-state sellers and marketplace facilitators (think: eBay). Yes, you'll pay a bit more to buy online. Yes, brick-and-mortar Arizona retailers are relieved to finally compete on a fair playing field.

Conforming to federal tax law and approving the *Wayfair* legislation generates extra dollars for State coffers, which legislators offset with \$325 million in income tax reductions. The cuts were a key sticking point between the parties as the budget became an all-GOP affair and was passed on party lines.

In total, [legislators backed an \\$11.8 billion spending plan](#) for FY 2020 – a budget that adds more than half a billion dollars in added funds for K-12 education, including another 5% bump in teacher pay. The budget also boosts pay for State troopers, correctional officers, caseworkers and more; adds more than \$200 million for road and other infrastructure projects; and sets aside approximately \$500 million of this year's surplus. The Rainy Day reserve will now stand at \$1 billion.

Occupational Freedom

One of the Governor's top legislative priorities was achieved when Arizona became the [first state in the nation](#) to provide universal recognition of out-of-state occupational licenses. Under the new law, Arizona will automatically grant a professional license to anyone who becomes a resident and had possessed a similar license free of disciplinary action for at least a year in their prior state. The move

[earned national kudos](#) for simplifying what had been among the nation's most complex licensing schemes.

Call it the "Seinfeld Session"

What was the 2019 session about anyway? It wasn't like 2018, when #RedForEd dominated. Illegal immigration didn't loom large. In truth, there was no single, overriding issue. The drought plan got done, sure. So did a [ban on texting-and-driving](#). Tax conformity, too.

New regulations against youth [vaping](#) were debated but didn't come to pass, and [vaccinations](#) was another hot topic that resulted in no change of State statutes. Charter school reform also came up short, though Sen. Kate Brophy McGee vowed to try again in 2020.

We may well remember 2019 as a session between - between the 2018 and 2020 elections, when party control of the State House and Senate are in doubt.

Industry Overview

Like many Legislative Sessions, there were many concepts circulating that would have impacted HOAs and the community management industry prior to session. AACM's lobbying efforts were successful in limiting the introduction of many of these bills. Of the priority bills tracked this session, there were five primary bills that impacted the community management industry specifically. AACM was involved either with direct lobbying efforts, providing technical support, or monitoring progress on all primary bills. Also, AACM was engaged with a stakeholder process convened by Senator David Farnsworth regarding his bill, SB1531 (HOAs; assessments; costs). This bill was an effort by Senator D. Farnsworth to reduce foreclosures by HOAs in Arizona. Initial concepts for the bill would have been disastrous for the industry and left HOAs without any enforcement power to collect monies owed to the community. Through AACM's efforts, SB1531 was amended multiple times to produce a bill that increases transparency, flexibility, and communications for homeowners in Arizona's managed communities.

Priority Bills Passed by the Legislature and Signed by the Governor

SB1085 ASSOCIATION HEALTH PLANS (BROPHY MCGEE)

Per this bill, an association qualifies as a path 1 bona fide association if the association meets currently specified statutory requirements for a bona fide association. An association qualifies as a path 2 bona fide association if the association meets specified requirements of federal law. An insurer electing to offer health benefits plans through a bona fide association to small employer groups of one is not required to make health benefits plans available as required by specified statute to small employer groups of one if the small employer is not seeking a health benefits plan through a bona fide association. Does not limit or prohibit the issuance of self-funded health benefits plans in Arizona through a bona fide association if the association is established and operating in compliance with applicable provisions of the federal Employee Retirement Income Security Act of 1974. By January 1, 2020, the Department is required to post information on the Department's public website that summarizes applicable state law and any other pertinent information related to association health plans.

SB1094 PLANNED COMMUNITIES; APPLICABILITY (BORRELLI)

Under this bill, statute regulating planned communities does not apply to a nonprofit corporation or unincorporated association of owners that is created or incorporated before January 1, 1974 and that does not have authority to enforce covenants, conditions and restrictions related to the use, occupancy

or appearance of the separately owned lots, parcels or units in a real estate development, unless a majority of all the members of such a nonprofit corporation or unincorporated association of owners elect in writing to subject the corporation or association to those statutes by recording a notice of election with the county recorder. The notice of election must include the written approval of a majority of all the members, and is effective as of the date of recording. The election may be rescinded in the same manner as an election. Contains a legislative intent section. Retroactive to July 17, 1994. Severability clause.

SB1531 HOAS; ASSESSMENTS; COSTS (D. FARNSWORTH)

Per the terms of this bill, various changes relating to condo associations and planned community associations (HOAs) are made. A lien for unpaid HOA assessments is extinguished unless proceedings to enforce the lien are instituted within six years, increased from three years, after the full amount of the assessments becomes due. For a delinquent account for unpaid assessments or for charges related to unpaid assessments, the HOA is required to provide a specified written notice to the unit owner or member at least 30 days before authorizing an attorney or a collection agency that is not the HOA's managing agent to begin collection activity on behalf of the HOA. Beginning January 1, 2020, an HOA with more than 50 units or lots that contracts with a third party to perform management services is required to provide a statement of account in lieu of a periodic payment book to the unit owner or member with the same frequency that assessments are provided for in the declaration. Information that must be included in the statement is specified. An agent for an HOA is authorized to collect assessments on behalf of the HOA directly from a unit owner and to charge a convenience fee that is approximately the amount charged to the agent by a third-party service provider.

HB2113 PUBLIC RESTROOMS; DIAPER CHANGING STATIONS (GRIFFIN)

HB2113 requires that any "public entity" (defined) that constructs a new restroom or "totally renovates" (defined) an existing restroom that is accessible to the public in a "public building" (defined) is required to include in at least one restroom in each building at least one changing station that is capable of serving both a baby and an adult and that is accessible to both men and women. The "responsible authority" (defined) is permitted to grant an exemption from this requirement if the installation would not be feasible or would result in failure to comply with the Americans with Disabilities Act. Does not establish a private right of action. Applies to construction and renovation projects in which the design has been approved on and after January 1, 2020.

HB2318 DRIVING; WIRELESS COMMUNICATION DEVICE; PROHIBITION (CAMPBELL)

This is a texting while driving ban. Thus, unless the vehicle is parked or stopped, a person is prohibited from operating a motor vehicle on a street or highway if the person physically holds or supports with any part of the person's body a "portable wireless communication device" or "stand-alone electronic device" (both defined), or if the person writes, sends or reads any text-based communication on a portable wireless communication device or stand-alone electronic device. Some exceptions. Beginning January 1, 2021, violations are subject to a civil penalty of \$75 to \$149 for a first violation, and \$150 to \$250 for a second or subsequent violation. A violation that results in an accident causing the death of or serious physical injury to another person is classified as causing serious physical injury or death by a moving violation, a class 1 (highest) misdemeanor. The Department of Transportation is required to post signs at each point where an interstate highway or U.S. highway enters Arizona that informs vehicle operators of the prohibition on using a portable wireless communication device while operating a motor vehicle. A peace officer who stops a motor vehicle for an alleged violation of this prohibition cannot take possession of or otherwise inspect a portable wireless communication device in the possession of the operator unless otherwise authorized by law. Peace officers may issue only a warning beginning on the

effective date of this legislation through December 31, 2020, and are prohibited from issuing a citation for a violation of this prohibition before January 1, 2021. Beginning January 1, 2021, the regulation of the use of portable wireless communication devices while operating a motor vehicle is not subject to further regulation by a county, municipality or other political subdivision, and any regulations in violation of this prohibition, whether enacted before or after January 1, 2021, are void. Session law authorizes enforcement of local laws regulating the use of portable wireless communication devices through December 31, 2020. Additionally, while a person is driving a motor vehicle and the motor vehicle is in motion on a public roadway or on an off-highway vehicle trail, the person is prohibited from watching a video or movie on a portable wireless communication device or stand-alone electronic device, and from recording or broadcasting a video on a portable wireless communication device or stand-alone electronic device. Some exceptions. Emergency clause.

HB2672 VACATION RENTALS; SHORT-TERM RENTALS; REGULATION (KAVANAGH)

With this bill, the list of purposes for which counties and municipalities are permitted to regulate vacation rentals and short-term rentals is expanded to include requiring the owner to provide contact information for the owner or the owner's designee who is responsible for responding to complaints in a timely manner in person, over the phone or by email at any time of day before offering for rent or renting the vacation rental or short-term rental. Counties and municipalities are required to notify the Department of Revenue and the property owner of "verified violations" (defined) of the county's or municipality's applicable laws and regulations within 30 days after a verified violation. If the owner of a vacation rental or short-term rental has provided contact information to a county or municipality, and if the county or municipality issues a citation for a violation of applicable laws, regulations or ordinances or a state law that occurred on the owner's vacation rental or short-term rental property, the county or municipality is required to make a reasonable attempt to notify the owner or the owner's designee of the citation within seven business days after the citation is issued. Vacation rentals and short-term rentals are prohibited from being used for nonresidential uses, including for a special event that would otherwise require a permit or license or for a retail, restaurant, banquet space or other similar use. An online lodging operator is prohibited from offering for rent or renting a lodging accommodation without a current transaction privilege tax license. The online lodging operator is required to list the transaction privilege tax license number on each advertisement for each lodging accommodation the online lodging operator maintains, including online lodging marketplace postings. Establishes penalties for violations. If there is a legitimate business need relating to enforcing laws, regulations and ordinances, a county or municipal tax official is authorized to redisclose transaction privilege tax information relating to a vacation rental or short-term rental property owner or online lodging operator from the new license report and license update report, subject to a list of specified requirements. The Governor provided a signing statement for this bill, and in his signing statement, the Governor stated his expectation was that this bill will have no impact on most short-term rental homeowners and that he is open to corrective action if this law is applied too broadly.

HB2687 CONDOMINIUMS; TERMINATIONS; APPRAISALS (WENINGER)

This bill modifies statutes relating to the termination of condominium procedures. At least 30 days before recording a termination agreement, the board of directors of the condo association are required to convene a meeting at which a person or entity that purports to have the agreement of at least 80 percent of the votes in the association must produce and make available to the unit owners copies of a signed notarized statement that the owner or a unit has executed a termination agreement. The person or entity is required to produce copies of a statement for each unit owner who has agreed to the termination, or is permitted to produce the signed termination agreement that includes a sufficient number of unit owners. Any meeting called for this purpose is required to be noticed as otherwise

provided by law, except that the board cannot take action by written consent or any other method that does not provide for an actual meeting that is open to all unit owners. Any termination agreement that is recorded without full compliance with statutory termination procedures is invalid. The respective interests of unit owners are modified to include their pro rata share of any monies in the association's reserve fund and the operating account. Also, as part of the arbitration process, the appraisers determining the fair market values of the condo units are required to fully disclose their appraisal methodologies and any other transaction occurring between the buyer and the sellers. Also makes changes identical to Laws 2018, Chapter 235 and repeals that legislation.

Priority Bills Failed by the Legislature or Vetoed by the Governor

SB1141 DISTRACTED DRIVING (MESNARD) - Vetoed

With this bill, a person would have been prohibited from driving a motor vehicle while distracted. A person would have committed distracted driving if, while driving a motor vehicle, the person engaged in any activity not related to the actual driving of the vehicle in a manner that visibly interfered with safely driving the vehicle, and drove the vehicle in a manner that was an immediate hazard to a person or property or did not exercise reasonable control of the vehicle as necessary to avoid colliding with any object, person, vehicle or other conveyance on, entering or adjacent to the highway. AS VETOED BY GOVERNOR. In his veto message, the Governor expressed concern that this legislation does not give drivers clear direction about what is prohibited, and stated his preference for the hands-free mobile device policy in HB2318, which he signed.

SB1165 WIRELESS COMMUNICATION DEVICE; DRIVING; PROHIBITION (BROPHY MCGEE) - Failed

Like HB2318, under this bill, unless the vehicle is parked or stopped, a person is prohibited from operating a motor vehicle on a street or highway while physically holding or supporting with any part of the person's body a portable wireless communication device or stand-alone electronic device, and while writing, sending or reading any text-based communication on a portable wireless communication device or stand-alone electronic device. Some exceptions. Beginning January 1, 2021, Violations are subject to a civil penalty of \$75 to \$149 for a first violation, and \$150 to \$250 for a second or subsequent violation. A violation that results in an accident causing the death of or serious physical injury to another person is classified as causing serious physical injury or death by a moving violation, a class 1 (highest) misdemeanor. The Department of Transportation is required to post signs at each point where an interstate highway or U.S. highway enters Arizona that informs vehicle operators of the prohibition on using a portable wireless communication device while operating a motor vehicle. A peace officer who stops a motor vehicle for an alleged violation of this prohibition cannot take possession of or otherwise inspect a portable wireless communication device in the possession of the operator unless otherwise authorized by law. Peace officers may issue only a warning beginning on the effective date of this legislation through December 31, 2020, and are prohibited from issuing a citation for a violation of this prohibition before January 1, 2021. Beginning January 1, 2021, the regulation of the use of portable wireless communication devices while operating a motor vehicle is not subject to further regulation by a county, municipality or other political subdivision, and any regulations in violation of this prohibition, whether enacted before or after January 1, 2021, are void. Session law authorizes enforcement of local laws regulating the use of portable wireless communication devices through December 31, 2020. Additionally, while a person is driving a motor vehicle and the motor vehicle is in motion on a public roadway or on an off-highway vehicle trail, the person is prohibited from watching a video or movie on a portable wireless communication device or stand-alone electronic device, and from recording or broadcasting a video on a portable wireless communication device or stand-alone electronic device. Some exceptions. Emergency clause.

HB2636 MOBILE FOOD VENDORS; MUNICIPALITIES (PAYNE) – Failed

Under this bill, a mobile food vendor is permitted to operate on private property in a residential area if the mobile food vendor obtains a separate written agreement with the property owner and does not serve members of the general public. Municipalities are authorized to establish a limit on the hours of operation and number of days a mobile food vendor may operate on a private property parcel in a residential area. Municipalities are prohibited from requiring a mobile food vendor to pay more than one fee per year to operate on private property within that municipality, and from requiring a mobile food vendor to be fingerprinted unless the mobile food vendor operates in an area zoned for residential use that is not on private property.

Monitored Bills To Be Aware Of Passed by the Legislature and Signed by the Governor

SB1271 PURCHASER DWELLING ACTIONS; NOTICE; COMPLAINTS (FANN)

According to this bill, various changes relating to dwelling actions filed by a purchaser. A seller who receives a written notice of the basis of a dwelling action is required to forward a copy of the notice by certified mail, return receipt requested, to the last known address of each construction professional who the seller reasonably believes is responsible for an alleged defect that is specified in the notice. The seller's construction professional is added to the process for the right to repair and replace a construction defect. Subject to Arizona rules of court, the identified construction professionals must be joined as third-party defendants, if feasible. Subject to Arizona rules of court, for each construction defect found to exist, the trier of fact in any dwelling action is required to first determine if a construction defect exists and the amount of damages caused by the defect, and identify each seller or construction professional whose conduct may have caused, in whole or in part, any construction defect. The purchaser has the burden of proof to demonstrate the existence of a construction defect and the amount of damages caused. The trier of fact is required to determine the relative degree of fault of any defendant or third-party defendant, and is required to allocate the pro rata share of liability based on relative degree of fault. The seller has the burden to prove the pro rata share of liability of any third-party defendant. The determination of whether a construction defect exists, the amount of damages caused by the defect, and who may have caused the construction defect must be bifurcated from and take place in a separate phase of the trial or alternative dispute resolution process from the determination of the relative degree of fault of any defendant or third-party defendant, unless the court finds that bifurcation is not appropriate. In a contested dwelling action, the court or tribunal is authorized to award the prevailing party reasonable attorney fees and taxable costs. An award of attorney fees is limited to the amount of fees actually and reasonably incurred with respect to the contested issue, and factors the court or tribunal must consider when determining whether the fees are reasonable are listed. Also, a covenant, clause or understanding in, collateral to or affecting a "construction contract" or "architect-engineer professional service contract" (both defined) involving a dwelling that purports to insure, to indemnify or to hold harmless the promisee from or against liability for loss or damage is against the public policy of this state and is void to the extent that it purports to do so. Some exceptions. Retroactive to July 1, 2019, the repeal date of the Construction Liability Apportionment Study Committee is moved to October 1, 2020, from July 1, 2019.

Monitored Bills To Be Aware Of Failed by the Legislature

HB2138 HOMEOWNERS' ASSOCIATIONS; EVAPORATIVE COOLERS (FILLMORE) – Not Heard

If this bill had moved forward, a homeowners' association could not prohibit the installation of an evaporative cooler that was designed primarily for use as a residential cooling device.

HB2259 WEBSITES; PERSONAL INFORMATION; ACCESS (THORPE) – Not Heard

This bill would have required any commercial or business website that collects personal information from any person and that has more than 500 users or personal accounts to establish a personal information portal, which would have had to be a secure online website that allowed a person to access the person's collected personal information and to correct any error in the person's personal information.

HB2585 CONDOS, PLANNED COMMUNITIES; WRITE-IN CANDIDATES (D. HERNANDEZ) – Not Heard

With this bill, the board of directors of a condominium association or planned community association was required to provide for and accept write-in candidates for election to any position on the board, other than for a director appointed by the declarant.

SB1480 CONDOS, HOMEOWNERS' ASSOCIATIONS; DECLARATION AMENDMENTS (OTONDO) – Not Heard

With this bill came various changes relating to condominium associations and planned community homeowners' associations. If there has been a material change to the plan under which a subdivision is offered for sale or lease and an amendment to the public report is required, after units or parcels have been sold or leased to anyone other than the subdivider or its subsidiaries, the subdivider is required to obtain written consent to the proposed amendment to the public report from all current owners or lessees before submitting the amendment to the State Real Estate Commissioner for review and approval if a list of specified conditions exist. An amendment to a declaration is permitted to apply to fewer than all of the units or less than all of the property that is bound by the declaration, and such an amendment is deemed to conform to the general design and plan of the community, if specified conditions apply. Increases the statute of limitations for an action to challenge the validity of an amendment adopted by the association to four years after the amendment is recorded, from one year, with some exceptions. While under the period of declarant control, the voting powers that are specified in the declaration are maintained and an amendment cannot be proposed without the written consent of the declarant. Establishes a list of actions that an amendment to a declaration cannot take without unanimous consent of the community members.

Conclusion

This session was successful for AACM as the organization was part of the policy discussions taking place regarding Arizona's HOA laws. During this discussions, AACM was able to be a valuable resource for Legislator's in crafting language that met the Legislator's goals, but also supported the community management industry. Like past years, a substantial amount of bills were prevented from being introduced or discussed in hearing. Off-session work that bolsters this result will continue, for example, educational efforts, luncheon invites, and relationship building activities. In the end, AACM successfully advocated for the freedom to contract, local nongovernmental control, and private property rights, and continues to speak as the "Voice of Reason" at the Arizona State Capitol.